

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM TILLMAN,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

No. 2:22-cv-01997-EFB (PC)

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding through counsel in an action brought under 42 U.S.C. § 1983 and removed to federal court. ECF No. 1. Plaintiff's first two complaints were dismissed with leave to amend. ECF Nos. 4, 10. Plaintiff has filed a second amended complaint (ECF No. 11, "SAC"), which the court screens herein.

The SAC names four defendants: the State of California and three officers at Mule Creek State Prison ("MCSP"): Drake, McNitt, and Nardy. SAC, ¶¶ 5-7. The allegations concerning the MCSP defendants are prefaced by allegations largely unrelated to the instant claims. SAC ¶¶ 10-28. In relevant part, plaintiff alleges that defendant Sgt. Drake raped plaintiff in his cell on January 20, 2018 "with unknown other corrections officers assisting[.]" *Id.*, ¶¶ 29-30.

Plaintiff alleges that he reported the rape to prison authorities, who arranged for him to be taken to a hospital for the collection of evidence for a rape kit. *Id.*, ¶ 31. Plaintiff alleges that McNitt contacted him to say that he and Drake had attended the Academy together, and asked if

1 plaintiff was “sure” he wanted to do this, and added: “You know we’re gonna get you for doing
2 this.” *Id.*, ¶¶ 32-33. Plaintiff claims that McNitt also “picked which CDCR employees, including
3 Nardy,” would drive plaintiff to the hospital for examination. *Id.*, ¶ 34.

4 The SAC alleges that, on the drive to the hospital, Nardy tightened the vehicle restraint
5 belts so as to restrict plaintiff’s airway. Additionally, the SAC alleges that Nardy took surface
6 streets, rather than the freeway, to the hospital, delaying plaintiff’s arrival by several hours. *Id.*,
7 ¶¶ 36-38. Hospital staff examined plaintiff and gave the rape kit evidence to Nardy. *Id.*, ¶¶ 39-
8 40. Plaintiff’s counsel has been unable to obtain any information or records pertaining to the rape
9 kit, which they believe was neither handed over to the proper authorities at MSCP nor sent out for
10 analysis. *Id.*, ¶¶ 41-42.

11 In Claim 1, plaintiff asserts Eighth Amendment violations by Drake, McNitt, and Nardy.
12 *Id.* at 8-10. A sexual assault on an inmate by a guard—regardless of the gender of the guard or of
13 the prisoner—is deeply “offensive to human dignity.” *Felix v. McCarthy*, 939 F.2d 699, 702 (9th
14 Cir. 1991). “Therefore, where uninvited sexual contact is totally without penological
15 justification, even though it does not produce serious injury, it results in the gratuitous infliction
16 of suffering, which violates contemporary standards of decency and the Eighth Amendment.”
17 *Meadows v. Reeves*, No. 1:11-cv-00257-GBC (PC), 2012 WL 1583023, at *4 (E.D. Cal. May 4,
18 2012), citing *Calhoun v. Detella*, 319 F.3d 936, 939 (7th Cir. 2003). Here, the SAC states
19 potentially cognizable Eighth Amendment claims against Drake and Nardy. *See id.* at *5 (claim
20 alleging uninvited sexual contact between a prison official and an inmate, in violation of the
21 Eighth Amendment, is similar to an excessive force claim).

22 In Claim 2, plaintiff asserts that Drake, McNitt and Nardy violated his federal due process
23 right “to obtain evidence of rape” with respect to the hospital exam and rape kit. To state a claim
24 for violation of the right to procedural due process, plaintiff must allege facts showing: “(1) a
25 deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate
26 procedural protections.” *Kildare v. Saenz*, 325 F.3d 1078, 1085 (9th Cir. 2003). Here, the SAC
27 does not allege that any defendant personally participated in constitutional wrongdoing with
28 respect to the rape kit. Though McNitt’s and Nardy’s alleged actions could be construed as

1 retaliatory under the First Amendment, plaintiff, who is represented by counsel, does not bring
2 such a claim, and it is not clear whether any such claim is exhausted.¹

3 In Claim 3, plaintiff seeks damages for violation of the Prison Rape Elimination Act
4 (“PREA”). “However, the majority of courts to consider the issue have determined that the
5 PREA does not actually provide for a private cause of action.” *Debose v. Third Watch*
6 *Commander*, 2:23-cv-00131-EFB (PC), 2023 WL 2058818, atb*2 (E.D. Cal. Feb. 16, 2023)
7 (collecting cases), *not adopted on other grounds in Debose v. Third Watch Commander*, 2023
8 WL 5614941 (E.D. Cal. Aug. 30, 2023).

9 Plaintiff also asserts state tort claims in Claims 4, 5, and 6. This court may exercise
10 supplemental jurisdiction over any state-law claims provided that they “are so related to claims in
11 the action within such original jurisdiction that they form part of the same case or controversy
12 under Article III of the United States Constitution.” 28 U.S.C. § 1367(a). Claim 4 for battery
13 against Drake is clearly related to the case at issue, as is Claim 6 for intentional infliction of
14 emotion distress against Drake and Nardy. On the other hand, Claim 5, alleging failure to
15 summon timely medical care, concerns the collection of rape kit evidence and does not relate to
16 the federal claims going forward. In sum, state-law Claims 4 and 6 may go forward against
17 defendants Drake and Nardy, while state-law Claim 5 is subject to dismissal.

18 Accordingly, IT IS HEREBY ORDERED THAT the Clerk of Court assign a district judge
19 to this action.

20 IT IS HEREBY RECOMMENDED THAT:

- 21 1. The Second Amended Complaint (ECF No. 11) proceed on the Eighth Amendment
22 claims and state tort claims for battery and intentional infliction of emotional distress,
23 as set forth above, against defendants Drake and Nardy;

24
25 ¹ As to defendant State of California, the Eleventh Amendment serves as a jurisdictional
26 bar to suits brought by private parties against a state or state agency unless the state or the agency
27 consents to such suit. *See Quern v. Jordan*, 440 U.S. 332 (1979); *Alabama v. Pugh*, 438 U.S. 781
28 (1978)(per curiam); *Jackson v. Hayakawa*, 682 F.2d 1344, 1349-50 (9th Cir. 1982). As the State
of California has not consented to suit, any purported claims against it in the SAC cannot go
forward.

2. All other claims be dismissed without prejudice to refiling in a separate action or actions;
3. All defendants except the two named above be dismissed from this action; and
4. If and when these findings and recommendations are adopted by the district judge, service of the SAC shall be ordered on defendants Drake and Nardy.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: June 17, 2024


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE